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Addendum

Contribution by indigenous peoples**

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I. Introduction

1. The present report focuses primarily on the thematic issue of mining and indigenous peoples' rights, including their civil, political, economic, social and cultural rights, as the main framework. The report discusses the developments and challenges and the lessons learned from the experiences of indigenous peoples, which also relate to the other thematic issues of the Commission on Sustainable Development at its eighteenth session, including chemicals, waste management and the changing patterns of sustainable consumption and production. All of these issues are interlinked and should be addressed in an integrated manner, taking into account the economic, social and environmental dimensions of sustainable development.

2. Within the context of the current global crises, indigenous peoples have consistently reviewed the progress of the global commitments made by the States Members of the United Nations, including in the Rio Declaration on Environment and Development, Agenda 21, the Johannesburg Plan of Implementation and the internationally agreed goals and targets set out in the Millennium Development Goals. Based on the Rio principles, environmental protection and social and economic development are the fundamental pillars and interdependent key elements to sustainable development. Indigenous peoples assert, however, that multidimensional challenges remain in achieving the goals and targets defined in the development framework for the United Nations.

3. The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly at its sixty-first session, in 2007, is now considered as the minimum international standard and the overarching framework to be used in assessing the human rights situation of indigenous peoples, as well as their economic, political, social and cultural development. It also serves as a significant guide for the continuing implementation of Agenda 21 and the Johannesburg Plan of Implementation in terms of the role of indigenous peoples in sustainable development, especially with the thematic issues on mining, chemicals, waste management, transport and the sustainable patterns of production and consumption.

4. Since the convening of the United Nations Conference on Environment and Development held in Rio in 1992, indigenous peoples have been recognized in international sustainable development efforts as a source of expertise and as models for sustainable living. The extensive lands of indigenous peoples include many of the most vulnerable and threatened ecosystems on our planet. Indigenous peoples have always made clear that they are culturally, spiritually and economically interlinked with their lands. However, despite existing respect for indigenous wisdom, the participation of indigenous peoples in the Commission on Sustainable Development process and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples continue to suffer from the abuse of their rights, assaults upon their economy, cultures and belief systems and the destruction of their ecosystems and sacred sanctuaries. Much of this destruction comes from the collaboration between Governments and mining investors seeking new access to non-renewable resources, artificially sustaining a dying unsustainable economic system at the expense of some of the most sustainable and long-standing ways of living on earth.

5. For indigenous peoples, maintaining sustainability amid changing patterns of consumption and production, mining, waste management and other development

processes depends upon the integration of care for all life and for the land and the rights of the guardians of the land. They continue to assert that respect for the rights and welfare of indigenous communities is essential both as a matter of social justice and for environmental sustainability. In line with the 1993 Vienna Declaration and Programme of Action, indigenous peoples endorse the internationally agreed position, which states that "the human person is the central subject of development" and that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights". Sadly, since 2002, corporations and some States have continued to justify the expansion of mining and mining exploration and the denial of indigenous rights under the needs of "national development", while directly arguing that such "development" supersedes the rights of communities to reject intrusions that damage their more traditional economy and values.

6. The Johannesburg Plan of Implementation referred to "sustainable mining" and its contribution to sustainable development. While indigenous peoples welcome any and all genuine efforts of the mining industry to reduce its carbon footprint and raise the standards of safety, respect for human rights and the raising of environmental standards around mines, there is also a serious concern that mining techniques and operations remain inappropriate, unsustainable and misrepresent the fundamental nature of mining, which is founded on the extraction of a non-renewable resource from the earth.

7. Review of the Johannesburg Plan of Implementation must ensure that implementation in the mining sector is in accordance with the principled framework of the Johannesburg Declaration on Sustainable Development and other international human rights and environmental instruments and that its current course is, as claimed, moving towards sustainability. Future mining activities need to include full recognition and respect for indigenous peoples' rights to their territories and to any proposed developments within them. Specifically, indigenous peoples are concerned about the fact that eight years after the Johannesburg summit and more than two years after adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the mining industry — especially through its industry body, the International Council on Mining and Metals, major companies and project financiers, such as the World Bank, the International Finance Corporation and the "Equator banks" — has failed to take action to recognize the Declaration as the minimum international standard relating to indigenous peoples' rights.

8. This is of particular concern since it is estimated that a disproportionately high percentage of the planned expansion of mining activities will continue to be carried out in indigenous territories.[1] Many major, high concentrations of non-renewable resources, including metals and fossil fuels, have been depleted. Increasingly, the global trend is to exploit lower-grade ore bodies. As this process continues to respond to market-dominated demands for "cheap" extraction, there is now a growing trend for mining projects to increase in scale and to extend over wider areas, thus inflicting a greater impact over these areas and deepening long-term disruption to the environment and to those who depend upon it.

[1] Roger Moody, "The lure of gold: how golden is the future?" Panos briefing No. 19, Panos Institute, London, May 1996.

9. Despite the claims and hopes incorporated in the Johannesburg Plan of Implementation, indigenous peoples are increasingly concerned that the steps being taken by companies are failing to adequately reduce the adverse impact of mining on people and the environment. The annual reports of companies show an increasing focus on their welcomed efforts to reduce the carbon intensity of their per ton production, yet most companies continue to accompany this effort with projections for sustained and substantial increases in production in the medium term, which far outstrip any promised reductions. Disturbingly, many of the largest projected increases in the production of companies such as, BHP Billiton, Peabody Energy and Rio Tinto, are for the increased production of coal. Individual companies and mining alliances, including the International Council on Mining and Metals, devote an increasing amount of work to climate change issues but have failed to address the need to minimize, and accelerate withdrawal from, carbon fuel production. Many of the actual impacts of mining also remain unreported, such as the long-term impacts on rivers, forests and coral reefs downstream from mines. While severe pollution is continuing at numerous sites, these impacts are not adequately referred to as the responsibility and the consequence of the mining activity.

10. The mining industry has laid increasing emphasis on its commitment to sustainability. Given the nature of mining, it is clear that the industry cannot be left to direct its own patterns of development. Various stakeholders must work to minimize overall fossil fuel use and production. There is a need to maximize the recycling and reuse of extracted minerals rather than to continue with the current destructive emphasis on increasing expansion into new and wider "greenfield" areas. Since the recovery and recycling of most metals can lead to a significant reduction in global mining impacts, especially to "greenfield" mining activities, a reduction in mining activities and an emphasis on recycling and substitution are necessary and significant contributions to a more sustainable world. The mining industry alone, however, is unlikely to take such steps while current practices remain viable and profitable. Governments therefore need to adopt a strategy of reducing total mining impacts through a reduction in mining activities.

II. Developments and challenges

11. The following words of a village leader reflecting on the compounded economic, environmental and sociocultural impacts of mining in Lihir, Papua New Guinea, remain true for many mine-affected indigenous communities today:[2]

> ... Please don't think that all Lihirians benefit from this mine. Those who are lucky and have a job earn a bit of money to support their family. Those of us ... who are not employed are very much affected. When the mine began its development, all our natural creeks were polluted, our sea was polluted, our bush fowls were chased away, our bushes stripped off. We were left without a thing except for a cheap house and a company water supply facility. We don't believe that what we are getting is worth what the company is making. The gold, the sea, the rivers and our lands are God-given gifts (for us, Lihirians) which no man should take away from us that easily.

[2] Matilda Koma, "Papua New Guinea: a guarantee for poverty", Extractive Industries and the World Bank, Baguio City, Philippines, 2005.

12. Indigenous territories, the world over, are critical ecosystems that ensure the livelihoods and cultures of indigenous peoples while hosting rich biodiversity and such providers of environmental services as forests, watersheds and carbon sinks. Mining activities, including the necessary establishment of ancillary facilities and structures, change traditional landscapes and land use in indigenous territories, resulting in the physical, economic and sociocultural displacement of indigenous peoples.

A. Sustainable production and consumption

13. Mining is an activity with a short-term life and long-term consequences.[3] Large-scale mining is fundamentally extractive and unsustainable. Contemporary mining has developed that has ever greater environmental impacts due to its extensive nature.[4]

1. Indigenous lands, biodiversity, culture and identity

14. The rich resources still intact in indigenous territories have been the targets of expanding resource extractive industries like mining, logging and mega-hydroelectric dams. For indigenous peoples, however, their lands and territories represent their lives. Indigenous peoples not only value their lands for the life upon them and the subsistence they provide but also for their spiritual, cultural and environmental essence, which protects, sustains and defines the relationship of indigenous peoples to their environment and resources.

15. The destruction of land and biodiversity for indigenous peoples equates to their death as a people with a separate identity. In Asia, 12 million hectares, 40 per cent of the total land area of the Philippines, have been earmarked for mining investments. More than half of the hectares are found in indigenous territories. The Dongria Kondh in Orissa, eastern India, are certain that their way of life will be destroyed when the British FTSE 100 company, Vedanta, will start to legally exploit their sacred Nyamgiri mountain for bauxite. The huge open cast mine will destroy a vast swath of untouched forest and will reduce the mountain to an industrial wasteland. More than 60 villages will be affected. In the words of a Dongria Kondh tribesman:

> If Vedanta mines our mountain, the water will dry up. In the forest there are tigers, bears, monkeys. Where will they go? We have been living here for generations. Why should we leave? We live here for Nyamgiri, for its trees and leaves and all that is here.[5]

16. In 2003, the former Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, wrote in his report that the presence of TVI Pacific, a Canadian mining company, in the Subanon's ancestral land had caused desecration of the sacred sites and breaking the ritual requirements of the sacred ground. The report also noted that the indigenous

[3] Mark Winfield and others, *Looking Beneath the Surface: An Assessment of the Value of Public Support for the Metal Mining Industry in Canada* (Ottawa, MiningWatch Canada and the Pembina Institute for Appropriate Development, 2002).

[4] Payal Sampat, "Creating mining dependency".

[5] Available from http://int.piplinks.org/resource+conflict (accessed 19 June 2009).

peoples had further alleged that the presence of TVI Pacific had led to the destruction of hunting grounds and herbal medicine areas, the disruption of education and divisions between indigenous peoples.[6]

2. Economy

17. Mining activities have devastating impacts on pre-existing indigenous economies. Modern mines deprive flora and fauna of food and natural habitat. Many indigenous communities report problems, including game fleeing from the noise, lights and disruption generated by mining. Livestock animals are recorded to have suffered from poisoning by polluted water and air. Impacts on the water table reduce access to the naturally occurring water upon which people and livestock depend.

18. Agricultural activities are frequently destroyed during mining. Some mining companies are becoming increasingly engaged in interventions in agriculture; however, these interventions most often remain premised on the belief that indigenous practices are backward and need improvement. Such an approach enables the company to claim increased credit for introducing change, yet such changes may actually erode longer-term and more sustainable indigenous food security and traditional agricultural practices.

19. Mining is a significant traditional economic activity in indigenous territories, and the indigenous peoples have developed their own small-scale mining activities. Modern corporate mining techniques in gold mining often depend on extensive extraction to find minute traces of the precious metals. This denies traditional miners access, while companies maximize profits from rapid exploitation of the total resource. In Benguet, the Philippines, for example, the indigenous Ibaloi people have a long history of traditional mining for gold. In the early twentieth century, the United States colonial administration of the Philippines granted rights over Ibaloi lands to private mining companies. Benguet Corporation operated deep mines in several locations employing several thousand people from 1905 up to the 1980s. In the late 1980s, the company shifted to open-pit mining operations. Its internal workforce was cut down from more than 6,000 individuals to under 700. The open-pit operations also displaced the majority of the indigenous miners and destroyed the fields and farms worked by local women farmers. After seven years of open-pit operations, the company permanently closed the site, dismissing all workers, except for a few caretakers and security personnel.[7]

20. Mining companies emphasize the employment and livelihood opportunities that mining provides. Employment levels in mining, however, are in severe decline. Employment is often limited to unskilled short-term labour or security positions. There is a serious failure to recognize and respect more sustainable livelihood activities that have been adversely affected by mining. Farms have been destroyed, waters polluted or lost and fisheries disrupted and diminished.

21. The rich resources of indigenous peoples have become a curse in the development spectrum. While the mining companies report billions of taxes paid to the Government, the State has seemingly failed to redistribute the benefits, especially to those directly impacted by the mines. Poverty and poor social services remain even in the communities hosting the mines. For example, communities in the

[6] Isa Lorenzo, "Of tribal leaders and dealers", 29 December 2008.

[7] See http://www.atkinsonfoundation.ca/publications.

Amazon are increasingly threatened with pollution and displacement by oil extraction companies.[8]

B. Chemicals and waste management

1. Health and well-being

22. The disruption of ecological balance and the destruction of viable economic activities or traditional livelihood resources resulting from landscape changes and pollution brought about by mining activities affects the health and well-being of indigenous communities. Waste and chemical materials have not only dissipated traditional survival resources but have found their way into the food systems. A 2002 toxic release inventory by the Environmental Protection Agency, called the TRI data, documents that gold mines were the largest source of mercury emissions in the tri-state region of Utah, Idaho and Nevada. Overall, TRI revealed that the hard rock mining industry was the nation's largest toxic polluter for the eighth year in a row.[9]

23. Coal mining results in high levels of respiratory illness, including silicosis and pneumoconiosis among miners. Respiratory illness has been shown to increase in surrounding communities.[10] Studies in the coal-affected communities in the Appalachian regions and elsewhere point to high rates of mortality, and chronic heart, lung and kidney diseases.[11] Impacts extend to the community, especially to the young and old. Among other minerals reported most frequently to be associated with health problems are asbestos, uranium and gold, primarily from the separation process.

24. According to the World Information Service on Energy uranium project, both uranium and asbestos mining have records of association with the development of cancers.[12] The current search for low carbon energy has done something to revive the nuclear industry. The development of nuclear power plants has been severely limited in recent years due to the realization of the associated health and security risks. Nothing has fundamentally changed. According to the Southwest Research and Information Center uranium assessment programme, the mining of uranium is extremely dangerous for workers and surrounding communities. Indigenous peoples communities comprise a disproportionately large number of the communities affected by uranium mining globally.[12]

25. The International Labour Organization (ILO) reports that mining is one of the most hazardous industries in which to work. Mining industries regularly report the highest level of work-related accidents and fatalities, with dangers extending to nearby communities.

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[8] Terry Wade, "Social unrest in Peru focuses around mining sector wealth". Available from http://www.mineweb.net/mineweb/view/mineweb/en/page36?oid=55143&sn=Detail.

[9] Tom GoldTooth, "The price of gold: gold mining and the impacts on indigenous communities: a case of human rights violations", statement to The Society of North American Goldsmiths, Cleveland, Ohio, 23 June 2005.

[10] Alan H. Lockwood and others, *Coal's Assault on Human Health: A Report from Physicians for Social Responsibility* (Washington, D.C., Physicians for Social Responsibility, November 2009). Available from http://www.psr.org/resources/coals-assault-on-human-health.html.

[11] M. A. Palmer and others, "Mountaintop mining consequences", *Science*, Vol. 327, January 2010.

[12] See http://www.wise-uranium.org/uip.html.

2. Water and food systems

26. Access to sufficient potable water is a critical factor in the viability of life for indigenous communities. The high Andes and other mountain regions and high latitude zones are often heavily dependent on snow or gradual glacier melt for their water. In semi-arid and arid regions, sources of adequate water are often a major consideration in the viability of their settlements. According to Mines and Communities, mining activities in high mountain areas increase the melting of glaciers and pollute vital water resources. They also use quantities of water that are excessive and that would otherwise be used by local farmers.

27. The mining industry uses huge volumes of water in its operations, such as in gold separation, coal washing and the slurry transportation of ores. The volume of waste rock involved, its chemical composition and the addition of often toxic chemical separators frequently result in adverse affects on water quality. Such impacts threaten the health of indigenous, as well as non-indigenous, people in the region. The Western Shoshone Defense Project states that the deterioration of soil conditions, onsite and downstream, through the exposure and build-up of salts and the exhaustion of long-term "fossil" water stored in porous rock layers have been evident in many mining town experiences.

28. Energy consumed by mining does not only come from fossil fuels; large volumes of freshwater are also required in almost every aspect of the operation, including for drilling, dust control and grinding ores. In Nevada, in the area of the Western Shoshone ancestral domain, the United States Geological Survey has found a decline in water tables by as much as 300 metres around some of the State's largest open-pit gold mines.[13] It is reported that in the Humboldt river area alone, over 250,000 gallons of water are being pumped by mines.[14] Barrick's Betze mine, pumps out 380,000 cubic metres (100 million gallons) of groundwater per day.[13] Mineshafts lie below the phreatic layer (groundwater below the static water table), and mining companies like Pipeline Mine remove almost 40,000 gallons of water per minute, 24 hours a day to keep the shafts dry.[14]

29. Modern gold mines can be more profitable by extracting miniscule amounts of the precious metal from vast tonnages of low-grade ore, which is ground and processed using various chemicals. Even other mineral extraction, including copper, tends increasingly to be from low-grade ore bodies and is therefore increasing the volumes of waste produced. It has been common practice to irresponsibly pour this waste into rivers, lakes and inshore waters. These practices, however, continue to be legal in some countries, including Papua New Guinea, and are still practised even by international mining companies claiming to have a responsible image. Such practices leave a continuing legacy of downstream erosion and pollution. The livelihoods of local fisherfolk and farmers have inevitably been destroyed. Mine wastes contain many potentially toxic materials, which may become acidic, creating the phenomenon known as acid mine drainage. According to a San Carlos University study on Murcillagos Bay, upon reaching the sea, mine chemicals, even in dilute form, bleach and kill corals upon contact, smothering them with silt and

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[13] Earthworks and Oxfam America, *Dirty Metals: Mining, Communities and the Environment* (Washington, D.C., and Boston, 2004). Available from http://www.nodirtygold.org/pubs/DirtyMetals_HR.pdf.

[14] Renate Domnick and Elisa Grazzi, "Shiny gold: poisoned land". Available from http://www.gfbv.it/3dossier/ind-nord/shoshon-en.html.

resulting in the death and migration of fish. Dumping waste into the sea has caused the release of fine particles into the ocean that choke and drive away sea life and blanket large areas of the sea floor.

30. In the United States of America, the Environmental Protection Agency estimates that mine wastes contaminate more than 40 per cent of the headwaters of western watersheds.[15] A study in the Migori gold belt in Kenya reveals heavy deposits of mercury, lead and arsenic from mine tailings in streams.[16] Mercury poisoning is very prevalent in northern California. It not only affects indigenous peoples; it affects all people, all races, all cultures, rural and urban, as well as the ecosystem and all habitats.[9]

31. Mining consultants have argued for greater use of the deep ocean for dumping mine wastes. Their argument is based on the disputed idea that in deeper parts of the ocean deposits are kept cold, in darkness and in situ, largely inert, and do little damage since there is little life at such depths. However, recent documentation has revealed a great diversity of life in the deep ocean and suggests that the deep ocean may have a vital role in combating climate change.

3. Constructing catastrophes

32. The most common practice today for the containment of mine tailings on land is through the construction of tailings dams, which are then filled with waste materials kept underwater to minimize their oxidation. Independent sources report an average of two to four major accidents per year. Documentation compiled by the United Nations Environment Programme (UNEP) reveals the disturbing frequency of tailings dam collapse and leakage in mines around the world. A table compiled by PIPLINKS[17] documents the frequent collapse and breaching of tailings dams in the Philippines between 1982 and 2007. When such dams are breached, the threat to life, environment and livelihoods downstream is often catastrophic. Bridges and riverbank structures are eroded and collapse. Riverside fields suffer inundation by toxic materials that cause long-term contamination of the land. In some regions of the world, including Central America, the southern United States and South-East Asia, climate change is already manifesting in the increased number and increased intensity of hurricanes and typhoons. Such events increase the pressures on tailings ponds, with construction strength measured by the ability to withstand infrequent weather extremes.

33. Earthquakes, seasonal storms bringing heavy rains, and poor construction can all increase the threat from these mostly earth-fill dams. Such threats are also increasing with the intensification and increased frequency of storms through the typhoon or hurricane belts. Releases of large quantities of tailings materials into the natural system have serious adverse long-term effects upon inshore corals, rivers, irrigation systems and agriculture. Tailings dams increasingly pose a threat to both the safety of downstream communities and have lasting adverse environmental impacts. There are increasing calls for stricter regulations and raised standards of tailings facilities and a call for a ban in key vulnerable zones.

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[15] See http://www.earthworksaction.org/EnvironmentalImpacts.cfm.

[16] *Environmental Geochemistry and Health*, vol. 24, Number 2 (June 2002).

[17] See "Chronology of tailings dam failures in the Philippines (1982-2007)". Available from http://www.piplinks.org/system/files/Tailings+dam+failures+(070722).doc.

4. Air pollution: free powder and chokers

34. Mining and mining processes also release toxic chemical substances into the air, besides generating high levels of dust. Emissions from mining activities and processes threaten the health and well-being of peoples and the environment. Reports associate mining and mining processes with the relative increase of respiratory and skin diseases in mining communities and the death of plants and animals from the exhaust of mining smelter plants.

35. Dust from mining and particulates from related vehicles create health, cleanliness and agricultural problems for nearby communities. Coal mining, cement manufacturing at limestone mining sites and other forms of mining cause high levels of respiratory illness, including silicosis and pneumoconiosis. Limestone quarrying and cement manufacturing choke and damage tree crops since the weight of dust on flowers restricts pollination. The original Maranao communities, whose land was taken for the operations of Iligan Cement Corporation, live under such a weight of dust that their capacity to grow essential food crops is severely reduced. The local communities surrounding the cement plants regularly have the highest rates of respiratory illness in the area.

C. Human rights of indigenous peoples

1. Indigenous women's roles and rights

36. Indigenous women often have respected and recognized roles in the management of the subsistence economy of indigenous communities. The destruction of these livelihood options and their partial replacement by paid employment in mining, most often filled by skilled male outsiders, with some lesser opportunities for local men, mostly in short-term and low-grade jobs (security guards, construction workers, labourers), results in a double reduction in the position and status of women. Studies on mining camp communities reveal increased incidences of gender violence, including rape and trafficking, domestic violence, marital breakdown, infidelity and sexually transmitted diseases.[18]

37. The escalating problems of food security, conflict and lack of opportunities predispose indigenous women to low self-esteem. The problem of food and nutrition for the family has increasingly beset women as wild food and water resources disappear and agricultural lands become unproductive. Outmigration (owing to the search for employment) and sex work have become economic options for women, exposing them to more vulnerable situations. Stories from Myanmar reveal that the influx of transient mine workers in the gold rush site in Kachin State and the lack of economic options for women has lead to increasing incidences of sex work.[19]

2. Indigenous peoples rights

38. Abuses of the individual and collective rights of indigenous peoples associated directly with mining development have continued at a disturbing high rate,

[18] International Finance Corporation, "Gender resources on mining (2007)". Available from http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/art_GEMTools_GenderResourcesonMining/$FILE/Gender+Resources+on+Mining.pdf.

[19] Kachin Development Networking Group, *Valley of Darkness: Gold Mining and Militarization in Burma's Hugawng Valley* (2007).

including killings, massive displacement, gender violence militarization, intimidation and "divide and conquer" tactics.

39. In 2009, attempts by indigenous peoples in Peru to assert their right to say "no" to unwanted extractives exploration within their territories resulted in a clash with the Government forces, resulting in the death of more than 50 people.[20] In 2008, Native American Nations in the United States submitted their own shadow report to the Committee on the Elimination of Racial Discrimination, documenting cases of abuse by mining companies. Carrie Dann, a Western Shoshone Nation elder and spokesperson, stated after a decision that was critical of the Government of the United States with respect to mining issues:[21]

> We are very pleased with the [Committee on the Elimination of Racial Discrimination] decision against the United States. Hopefully, the United States will begin to address its poor history with the indigenous peoples and begin to act in a more honest and good-faith manner. The struggle of the Western Shoshone Nation is the struggle of all indigenous peoples. It is not just about abuse of power and economics — it is about the stripping away of our spirit... The [Committee on the Elimination of Racial Discrimination] decision confirms what the Western Shoshone and other indigenous peoples have been saying for a very long time — it is a first step that we can use in our ongoing work and in our corporate engagement and public education strategies. We also hope this decision and the Western Shoshone struggle can be used to encourage and strengthen other peoples' struggles to protect their spirituality, the lands, resources and their rights as indigenous peoples.

40. In Papua New Guinea, mining company security personnel were accused at the 2009 Permanent Forum on Indigenous Issues of firing upon indigenous peoples and burning the houses of local people at the Porgera mine, which is controlled and operated by Barrick Gold. Subsequently, the company acknowledged that the forced evictions had occurred in violation of international law.[22]

41. Armed aggression continues to impede indigenous peoples' assertion of their rights against mining companies. Where opposition is strong, there are clear reports of Governments intervening with their police and military forces in partisan support of the mining interests. The use of State forces and the deployment of private security and paramilitary forces by mining corporations have been associated with outbreaks of violence, illegal detention, torture and intimidation. Such forces have repeatedly been accused of serious abuses, including at Freeport McMoRan's Grasberg mine in West Papua and TVI Pacific's mine in the Philippines.

42. The Myanmar military continues in a culture of impunity to provide military backing for mining expansion. The Government has reportedly opened up 18 per cent of the Hugawng Valley in Kachin State to mining concessions in 2002. As of 2006, there were eight mining companies operating 31 mine sites in the valley. To

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[20] Lila Barrera-Hernández, "Peruvian indigenous land conflict explained", *Americas Quarterly* (June 2009).

[21] International Indian Treaty Council, "Consolidated indigenous shadow report to United Nations-Committee on the Elimination of Racial Discrimination", February 2008.

[22] Amnesty International, "Companies accept that police forced communities from their homes near Porgera mine" (December 2009). Available from www.minesandcommunities.org/article.php?a=9739.

facilitate such interest, the Government has beefed up military forces in the area, from 26 battalions in 1994 to 41 battalions currently.[19]

43. The rights of indigenous peoples to free, prior and informed consent on projects affecting them and their territories is laid out in the United Nations Declaration on the Rights of Indigenous Peoples. Numerous reports, however, indicate that, even where there exist legal frameworks that are supposed to respect this right, such a right in practice is consciously manipulated and abused by Government and corporate representatives. For the majority of indigenous peoples, despite Governments endorsement of the Declaration, their rights exist only on paper.

III. Lessons learned

A. Technology alternatives and industry initiatives

44. While there are claims to significantly establish management systems and policy frameworks to comply with global standards and to improve reporting, social responsibility and the promotion of scientific and sustainable mining, the extractive industry has yet to match its pronouncements with sufficient action on the ground. Communities in many parts of the world still await the rehabilitation and environmental clean-up of abandoned mining camps, as promised by companies during the heyday of their operations and profit bonanzas.

45. Alternative fuels, designed to replace fossil fuels in supposedly adapting and mitigating the adverse impacts of climate change, have also been widely challenged by indigenous peoples because they compete with the traditional use of land and resources, have caused the violation of indigenous peoples' rights, and have caused more environmental problems due to the production of biogas from chemically dependent jathropha and oil palm.

46. The mining industry has emphasized the potential for the recycling and reuse of many metals. In the article, "Scrapping mining dependence",[23] Payal Sampat presented alternative ways in which the world could meet its demand for minerals and reduce the environmental impact. For example, he reported that it might take 95 per cent less energy to produce aluminium from recycled materials than from bauxite ore, that recycling copper took between five to seven times less energy than processing ore and that recycled steel used two to three-and-a-half times less. The potential of recycling to contribute more raw materials is mainly limited by the slow take-up of many authorities and the need for stronger legal frameworks and incentives to encourage recycling. Many of the largest and most influential mining companies mine both for metals and energy minerals and yet have little economic incentives to reduce the production from greenfield sites. In addition, the companies involved in recycling are mostly smaller in size and independent of the major miners. Therefore, they have little or no economic incentive to promote recycling in practice.

47. Indigenous artisanal mining is also a feasible mining alternative, if given the right conditions and incentives. Some indigenous peoples have practised small-scale

[23] Available from http://www.worldwatch.org/node/3617.

artisanal mining since time immemorial. Indigenous artisanal mining can exist in communities, in harmony with indigenous socio-political systems, where the values of collective community participation and equitable sharing are the norm.[24] Indigenous artisanal mining complements agricultural income, ensuring food security. Indigenous peoples' customary practices and knowledge systems have made artisanal mining sustainable for long periods of time, until today, ensuring the least damage to the ecosystem. This type of mining is traditionally practised without recourse to chemicals.

48. Measures adopted by indigenous peoples, including the practice of indigenous artisanal mining, have been well-recognized by the world community as contributing to the efforts to adapt to and mitigate the impacts of climate change. Various stakeholders can invest in and support the development and enhancement of indigenous artisanal mining in terms of research, development and the use of appropriate and clean technology, the promotion of safety standards and measures, and policy formulation and can extend other support systems to encourage the practice of this alternative.

49. The World Bank report on artisanal mining provides the urgency to look into this practice as an alternative to large-scale, corporate mining. The study found that artisanal and small-scale mining is practised in about 50 countries by people who live in the poorest and most remote rural areas, with few employment alternatives. At least 20 million people are engaged in artisanal and small-scale mining and a further 100 million people depend on it for their livelihood. As many as 650,000 women in 12 of the world's poorest countries are engaged in artisanal mining. Between 1 million and 1.5 million children, evenly split between boys and girls under the age of 18 years old, are also reported to be involved in small-scale mining, according to ILO. The range of minerals mined by artisan miners is diverse, including gemstones, gold, copper, cobalt, coltan, coal and other industrial minerals.[25]

B. International instruments and voluntary standards

50. There are sufficient and appropriate legal instruments and voluntary standards to ensure minimum compliance in respect of human rights and other issues related to extractive industries. The Universal Declaration of Human Rights, the Geneva Convention and Additional Protocols I and II, and the International Convention on the Elimination of All Forms of Racial Discrimination are international legal instruments on the issue of human rights. The mining industry, particularly through the International Council on Mining and Metals, has laid emphasis on voluntary standards and mechanisms. There are a confusing number of such voluntary standards, including the United Nations Global Compact, United Nations draft norms on the responsibility of transnational corporations and other business enterprises with regard to human rights, the voluntary principles on security and human rights, Amnesty International human rights principles, the International Red Cross and Red Crescent Movement's code of conduct on humanitarian assistance, the Organization for Economic Cooperation and Development guidelines for

[24] Evelyn Caballero, *Gold from the Gods: Traditional Small-scale Miners in the Philippines* (Quezon City, the Philippines, Giraffe Books, 1996).

[25] See http://siteresources.worldbank.org/INTOGMC/Resources/CASMFACTSHEET.pdf.

multinational enterprises, the Global Sullivan Principles and the International Council on Mining and Metals principles. There are also legal instruments and voluntary standards for issues regarding employee relations, resettlement, indigenous peoples, security arrangements and dealings with armed groups, environmental impacts, bribery and corruption. While such an array of standard-setting efforts clearly indicates the universal recognition of a serious problem, their variability and voluntary character may obscure the path to better and safer practices and conformity to required international standards on human rights and other key matters.[26]

51. Despite the proliferation of voluntary standards, breaches and even serious violations continue to be reported by indigenous peoples from every region of the world. Such breaches of basic human rights protection, security arrangements and respect for sacred and historical sites can have profound and negative impacts. While voluntary frameworks may have some marginal value, the seriousness of many of the reported impacts of mining presents the need for strong sanctions, backed by legal frameworks that offer genuine routes to redress. Industry self-regulation is an unacceptable and inadequate alternative, given the seriousness of these impacts.

52. Significantly, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples was a historical milestone for the United Nations and indigenous peoples, with the distinction of being the only Declaration that was drafted and negotiated with the rights holders themselves. The Declaration was negotiated over a long period and arrived at by compromise and agreement. Its provisions are an expression of the minimum rights pertaining to the respect, recognition and fulfilment of indigenous peoples' rights. The Declaration assumes the weight of international law since it contains many of the rights already enshrined in legally binding conventions and covenants such as the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

53. Since the World Summit on Sustainable Development, the mining industry, through the International Council on Mining and Metals, has had various discussions with different indigenous groups; however, access to such discussions has been variable and on an ad hoc basis. Despite clear expressions in all these discussions of the need for the industry to incorporate the United Nations Declaration on the Rights of Indigenous Peoples and the principle and practice of free, prior and informed consent into industry practice, companies have so far failed to do so, which has deepened the significant levels of distrust between the industry and indigenous peoples.

54. States have different responses to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Many States have not proceeded to incorporate its principles into national law. There remains strong controversy over implementation, in particular in relation to extractive projects. It is hoped that regional frameworks that support the development of new mining policies, such as those established by the Association of Southeast Asian Nations (ASEAN) and the Asia-Pacific Economic Cooperation (APEC), will take the Declaration into account.

[26] See http://www.international-alert.org/pdfs/conflict_sensitive_business_practice_all.pdf.

Governments taking steps to promote responsible mining, including establishing specific policy frameworks that address the sustainability of the mining sector, should likewise include the Declaration and its provisions in their policymaking.

55. Independent and autonomous organizations of indigenous peoples have increasingly used the Declaration and other legal instruments to assert their rights in extractive industry cases. In a landmark legal victory in Belize in October 2007, the Supreme Court ruled in favour of two Mayan villages, Conejo and Santa Cruz, affirming the collective rights of the indigenous communities to their land and resources. The same court ruled that the Government of Belize must determine, demarcate and title those traditional village lands in accordance with Mayan customary practice.

56. In 2002, the United Nations closed the Subcommission on the Promotion and Protection of Human Rights and the Working Group on Indigenous Populations as part of its restructuring, with the important mandate to formulate proposals and conduct studies to address and improve the conditions of indigenous peoples. One measure that was lost in this process was the United Nations draft norms on the responsibility of transnational corporations and other business enterprises with regard to human rights. This was a framework in an advanced stage of preparation that sought to establish the obligations and make recommendations on practices for the operation of multinational companies. This was a loss for the protection of indigenous rights. Today, the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, John Ruggie, is charged with investigating similar issues. He has expressed his own concern about the predominance of complaints concerning the activities of mining and other extractive corporations.

57. The Committee on the Elimination of Racial Discrimination, along with other United Nations human rights structures, has been presented with strong evidence of discrimination in the determination of land disputes between indigenous peoples and mining companies in several different States. Organizations in Cambodia, India and Indonesia have organized workshops to learn from the experience and are currently building capacities to make their own submissions to the Committee. While such initiatives express a mark of confidence in the United Nations human rights structures, the lack of adequate redress for the majority of complainants remains a limitation.

58. Few countries have taken positive policy initiatives to address the long-standing issues of indigenous peoples. Bolivia, for example, approved a new constitution in January 2009, granting more power to the country's indigenous Aymara majority. The new constitution also provides legal mandate to support the call of President Evo Morales to nationalize the natural gas industry.[27] The Philippines' Indigenous Peoples Rights Act of 1997 has been widely used to assert the rights of indigenous peoples', including to land, territories and resources, free, prior and informed consent, and to practise socio-political systems. However, complaints on the effective implementation of the law on many concerns is widespread, including the harmonization of the Act with the Philippine Mining Act.

[27] See http://www.guardian.co.uk/world/2009/jan/26/bolivia.

C. Indigenous peoples action

59. The most significant lesson in the engagement related to the extractive industry is the relentless effort of indigenous communities to oppose unwanted mining projects on the ground through various strategies, including people's action. Even local governments are becoming active in resisting mining entry and operation into their jurisdictions. The most recent indigenous people's initiative protesting the insistence of a mining project to operate despite legal opposition, a provincial mining moratorium, involves Intex Resources, a Norwegian mining company. The company's proposed nickel mining project would cover 11,218 hectares and span four towns, including watershed areas and the legally recognized ancestral domain of the Mangyan indigenous peoples.[28] Mangyan protesters and their advocates went on a hunger strike in late 2009 until the Department of Environment and Natural Resources revoked the environmental compliance certificate for large-scale mining issued earlier to Intex Resources.

60. In Peru, Reuters reported that workers at several big mines had gone on strike and joined a nationwide walkout, hoping to pressure Congress to pass a bill that would give them a greater share of profits from sky-high metals prices. The strike affected production of the Ilo smelter and the Cuajone mine of Southern Copper, Antamina, Peru's biggest copper-zinc pit, owned by BHP Billiton, and Xtrata, the Pierina mine of Canada's Barrick Gold, the silver-zinc mine of Volcan's Andaychagua, and Freeport-McMoRan's Cerro Verde mine. In June 2009, the violent dispersal by the military against the peaceful blockade by indigenous peoples in Bagua, Peru, who were asserting their legitimate concerns, elicited strong outrage and condemnation from the Permanent Forum on Indigenous Issues and a wide range of civil society groups around the world.

61. These actions by indigenous peoples generated strong support among various advocacy groups, and indigenous peoples are also effectively maximizing opportunities at the international level to vent their issues and to express their concerns and perspectives through their participation in United Nations processes such as the Permanent Forum on Indigenous Issues, the Commission on Sustainable Development, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, and the Forum on Forests.

62. In March 2009, indigenous peoples and their support organizations from 35 countries around the world gathered in Manila for the International Conference on Extractive Industries and Indigenous Peoples. Cases were presented on long-standing issues and concerns brought about by extractive projects of oil, gas and minerals from their lands and territories. Resolutions and recommendations, addressed to their communities and supporters, civil society organizations, mining companies, investors and States were set out in the Manila Declaration.[29]

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[28] See http://technology.inquirer.net/infotech/infotech/view/20091128-238883/Mangyans-end-hunger-strike.

[29] See http://www.tebtebba.org.

IV. Policy recommendations

63. Efforts towards sustainable development are under increasing threat from so-called "greenwash" and unsustainable practices disguised in words denoting sustainability. The Johannesburg Plan of Implementation is an action plan, and the Commission on Sustainable Development needs to develop the capacity to assess actions or the lack of them. Sustainable development within the Commission on Sustainable Development process is also dependent upon upholding a balance of standards, as laid down in various United Nations obligations on environmental rights, human rights and social justice. The capacity of trusted independent mechanisms to monitor and report on action and implementation needs to be created and strengthened.

64. The mining industry is hugely profitable and influential. Companies exert influence over Governments to promote their position, sponsor research on chosen topics and represent themselves in international forums. The industry and Governments have established an intergovernmental panel on mining and sustainable development; however, indigenous and other affected communities are largely excluded from such discussions. The threats to and opportunities for sustainable development posed by the mining industry require a more balanced standing body representing all concerned sectors to work with independent monitoring structures to present and disseminate in a transparent manner more information on the serious issues concerning mining extraction.

65. Currently, indigenous communities and others deeply affected by mining have a limited capacity to respond or raise their complaints. It is vital to develop and increase vehicles for complaint, justice and redress at the global level, as well as relevant capacity-building activities.

66. Indigenous peoples seek full implementation of the United Nations Declaration on the Rights of Indigenous Peoples, especially the provision of the right to free, prior and informed consent, as the overarching framework and minimum international framework for the mining industry. No development will be sustainable at the expense of human rights, including indigenous peoples' rights.

67. The effective involvement and greater participation of all stakeholders, including affected indigenous peoples, local communities and women, in all processes and mechanisms should be further enhanced. Transparency in local governance and corporate social responsibility should be promoted to broadly involve all stakeholders and rights holders. This requires a human rights approach with required consultations and sufficient information as a basis for robust decisions. Currently, there is no adequate mechanism to provide such information as a basis of dialogue and informed decision-making.

68. The World Bank Group and other international financial institutions should update their operational directives and safeguard policies pertaining to indigenous peoples in conjunction with existing international standards, especially the right to free, prior and informed consent, as required under the United Nations Declaration on the Rights of Indigenous Peoples. Likewise, other multilateral lending institutions, including the Equator banks, should include the requirement to obtain free, prior and informed consent in their safeguard policies on indigenous peoples' environments and other concerns. All bilateral trade agreements should also guarantee that indigenous peoples' human rights are respected.

69. With the fundamental changing patterns in sustainable production and consumption, and with consideration of the principle of common but differentiated responsibilities, all sectors, especially Governments, should actively promote more sustainable ways of life, including those practised by indigenous peoples for generations, with respect to their traditional knowledge, practices and innovations, and taking into account reliable sustainable technological alternatives. They should also recognize the specific roles and contributions of indigenous women to sustainable production and consumption patterns.

70. There should be greater involvement of indigenous peoples in all discussions and decisions pertaining to international agreements and conventions that address issues of biological diversity and/or climate change. This would advance and more effectively enforce higher standards of environmental protection, including the banning of harmful chemicals and toxic wastes and of destructive extractive practices within the various ecosystems.

71. The mining industry and the provisions of raw materials for development have future implications. These are not confined to the internal concerns of the mining industry. The Commission on Sustainable Development should elaborate guiding principles to assist in the transition to sustainability. In relation to mining, this could be expressed as recognition of the adverse impacts mining can have, including the permanent alteration of the mined area, production of materials that may, through their processing or use, harm the environment. Therefore, all efforts should maximize the recovery, reuse of minerals, substitution of more sustainable materials and better delineation of zones and categories of land and sea that should be barred from mining. Efforts should seek to minimize greenfield site mining through these and other means.